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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,)	No. CR 04-0404 SI
)	
14 Plaintiff,)	PLEA AGREEMENT
)	
15 v.)	
)	
16 THOMAS J. POOL,)	
)	
17 Defendant.)	
18)	

19 I, THOMAS J. POOL, and the United States Attorney's Office for the Northern District of
20 California and the Fraud Section of the Criminal Division of the Department of Justice (hereafter
21 "the Government") enter into this written plea agreement (the "Agreement") pursuant to Rules
22 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to the sole count in the above-captioned information,
25 charging me with manipulation of the price of a commodity in interstate commerce, in violation
26 of 7 U.S.C. § 13(a)(2). I agree that the elements of the offense and the maximum penalties are as
27 follows:
28

PLEA AGREEMENT

Elements:

(1) I had the ability to influence the market price of natural gas in interstate commerce;

(2) the published index price of natural gas was artificial in that it did not reflect the legitimate forces of supply and demand;

(3) my conduct was a cause of the artificial price; and

(4) I intended to cause the artificial price.

Penalties:

a. Maximum prison sentence: 5 years

b. Maximum fine: \$500,000

c. Maximum supervised release term: 3 years

d. Mandatory special assessment: \$100

e. Restitution: Up to the amount of the loss

2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the following facts are true:

Background

Williams Energy Marketing and Trading (“Williams”), a subsidiary of The Williams Companies, is located in Tulsa, Oklahoma. Williams trades a number of different commodities, including natural gas. The natural gas trading group has three primary goals: (1) to ensure physical delivery of natural gas to customers; (2) to hedge against adverse price fluctuations in the market; and (3) to take speculative positions that involve more risk but have the potential to generate high profits. To achieve these goals, traders work with several different natural gas products. Physical trades call for the delivery of natural gas to specific locations. Physical natural gas products include next day gas (to flow the next day), baseload gas (to flow throughout the next month), and term gas (to flow for any designated length of time beyond 30 days). In contrast, financial trades generally are entered without either party to the transaction intending to take delivery of any natural gas. Financial trades can be entered on the New York Mercantile Exchange (called futures contracts) or off-exchange directly between companies (called forward

1 contracts). Financial trades can be used both to speculate and to hedge against price risk in the
2 physical markets. Regardless of the type of transaction, the counter-parties can agree to any
3 price, but often contract prices are tied to published index prices, described below. Both monthly
4 and daily indices are published by a number of different industry newsletters. Monthly indices
5 are published by Inside FERC's Gas Market Report ("Inside FERC") and NGI's Bidweek Survey
6 ("NGI"), among others, on the first business day of each month. Natural gas prices are published
7 for dozens of locations throughout the United States where physical natural gas can be purchased
8 and sold. The publications calculate the monthly index prices using trade data they collect from
9 natural gas traders during the last week of the month. In the natural gas industry, the last week of
10 the month is called "bid week." It was my understanding that the index price at any given
11 location usually represented a volume-weighted average price for baseload gas bought and sold at
12 that location at a fixed price during the most recent bid week.

13 I began working for Williams in January 1997 directly after graduating from college.
14 From approximately August 1998 through October 2002, I was the basis trader for Williams'
15 West Desk for natural gas trading. As a basis trader, I was responsible for buying and selling
16 natural gas products to take advantage of the difference between the price of a physical natural
17 gas contract at a particular location and the price of a standard "Natural Gas" contract traded on
18 the New York Mercantile Exchange. During my employment at Williams, basis traders also
19 were responsible for reporting to the index publications, even though Williams' physical traders
20 executed most of the fixed price, baseload transactions that the indices used in calculating index
21 prices.

22 Manipulation of Natural Gas Index Prices

23 I understand and agree that natural gas is a commodity as defined in Title 7, United States
24 Code, Section 1a(4) and that natural gas flows through pipelines that cross state lines, thereby
25 affecting interstate commerce. As the basis trader for Williams' West Desk, I was responsible
26 for reporting trades negotiated during bid week at locations in the West to Inside FERC and NGI
27 for these publications to use in calculating the first of month indices. From approximately June
28 1, 1998 through June 30, 2002, I conspired with others at Williams to report fictitious trades to

1 Inside FERC and to NGI for the purpose of manipulating the published index prices to increase
2 the value or profitability of Williams' natural gas positions. By reporting false trades, I intended
3 to influence the price published by Inside FERC and NGI at each location for which I reported.
4 To the extent that my false trades were included in the index calculations, the published index
5 prices did not reflect the legitimate forces of supply and demand.

6 When I reported to the index publications, I attempted to skew the published index prices
7 in the direction that would result in a benefit to one or more entities within the Williams
8 Companies. I knew whether my basis positions would benefit from high or low published index
9 prices at the various locations where I traded, and the physical traders similarly knew how their
10 positions would be affected by the published index prices. In furtherance of the conspiracy, the
11 physical traders often indicated to me whether their positions would benefit from high or low
12 published index prices at the locations where they traded.

13 To achieve the goals of the conspiracy, most of the trades I reported were deliberately
14 fabricated. At the end of each bid week, the physical traders would orally inform me of their
15 actual fixed price, baseload trades and I would list these trades in an Excel spreadsheet. Then I
16 would add fictitious trades to the spreadsheet to achieve the desired weighted average price at
17 each location for which I reported to the index publications. My supervisor taught me how to
18 arrange the collection of false trades on this spreadsheet to look like a random sampling that
19 would appear credible to the publications. Finally, I would fax or e-mail the completed
20 spreadsheet to Inside FERC and NGI. For the false trades I included in the spreadsheet, the
21 reported prices and volumes did not represent any actual trades executed by Williams during the
22 relevant bid week. I knew that the publications were soliciting only fixed price, baseload trades
23 executed by Williams during bid week. On at least one occasion when my reported trades were
24 questioned by Inside FERC's Chief Editor, I concealed the fact that I had reported fictitious
25 trades.

26 I have reviewed Inside FERC's calculations for its February 2001 index prices, and I have
27 concluded that I successfully manipulated the index prices of natural gas on February 1, 2001 at
28 three locations: (1) Southern California Gas Co. ("Socal"), (2) the San Juan Basin on the El Paso

1 Natural Gas Co. pipeline, and (3) the Rocky Mountains location on the Colorado Interstate Gas
2 Co. (CIG) pipeline. I intended to manipulate the February 1, 2001 index prices of natural gas at
3 these three locations, and but for the false data that I submitted during bid week in January 2001,
4 the index calculations for these three locations would have been different.

5 3. I agree to give up all rights that I would have if I chose to proceed to trial,
6 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
7 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
8 any other Fourth or Fifth Amendment claims; to any further discovery from the Government; and
9 to pursue any affirmative defenses and present evidence. I waive any venue defenses that I might
10 have in this case, and I consent to the disposition of this case in the Northern District of
11 California. To the extent that I have a right to have facts that are used to determine the sentence
12 (including any Sentencing Guidelines factors and any departure grounds) charged in the
13 indictment by the grand jury and found by a jury at trial beyond a reasonable doubt (see Blakely
14 v. Washington, 124 S. Ct. 2531 (2004)), I waive those rights and agree that the Court will find
15 the facts that determine my sentence beyond a reasonable doubt, consistent with the Ninth
16 Circuit's holdings in United States v. Thomas, 355 F. 3d 1191, 1201-02 (9th Cir. 2004) and
17 United States v. Banuelos, 322 F. 3d 700 (9th Cir. 2003).

18 4. I agree to give up my right to appeal my conviction, the judgment, and orders of
19 the Court. I also agree to waive any right I may have to appeal my sentence. As to any matter in
20 which I am cooperating with the Government pursuant to this Agreement, I waive any right I may
21 have to assert the attorney-client privilege to decline to answer questions relating to
22 communications with counsel for any other defendant including a defendant acting pro se, except
23 as to communications where counsel for the other defendant was my attorney of record. See
24 United States v. Henke, 222 F.3d 633 (9th Cir. 2000) (counsel for any defendant who has joined a
25 joint defense agreement may owe a duty of loyalty to all defendants participating in the joint
26 defense agreement). I also waive my right to conflict-free representation by any attorney or pro
27 se defendant where a conflict arises from that attorney's or defendant's participation in a joint
28 defense agreement to which I also was a party.

1 5. I agree not to file any collateral attack on my conviction or sentence, including a
2 petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except for a claim
3 that my constitutional right to the effective assistance of counsel was violated.

4 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
5 entered.

6 7. I agree that if restitution is deemed appropriate, the amount will not be limited to
7 the loss attributable to the count to which I am pleading guilty, pursuant to 18 U.S.C. §
8 3663(a)(3). I agree that I will make a good faith effort to pay any fine, forfeiture, or restitution I
9 am ordered to pay. Before or after sentencing, I will, upon request of the Court, the Government,
10 or the U.S. Probation Office, provide accurate and complete financial information, submit sworn
11 statements and give depositions under oath concerning my assets and my ability to pay, surrender
12 assets I obtained as a result of my crimes, and release funds and property under my control in
13 order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time
14 of sentencing.

15 8. I agree to cooperate with the Government before and after I am sentenced. My
16 cooperation will include, but will not be limited to, the following:

- 17 a. I will respond truthfully and completely to any and all questions put to
18 me, whether in interviews, before a grand jury, or at any trial or other
19 proceeding;
20 b. I will provide all documents and other material asked for by the
21 Government;
22 c. I will testify truthfully at any grand jury, court or other proceeding as
23 requested by the Government;
24 d. Should the Government bring a forfeiture action, I will surrender any and
25 all assets acquired or obtained directly or indirectly as a result of my illegal
26 conduct as set forth above;
27 e. I will request continuances of my sentencing date, as necessary, until my
28 cooperation is completed;
 f. I will tell the Government about any contacts I may have with any co-
defendants or subjects of investigation, or their attorneys or individuals
employed by their attorneys;
 g. I will not reveal my cooperation, or any information related to it, to anyone
without prior consent of the Government.

1 The parties acknowledge and agree that U.S.S.G. § 1B1.8 applies to this Agreement, and
2 pursuant to that section any self-incriminating information provided by the defendant pursuant to
3 this Agreement shall not be used in determining the applicable guideline range.

4 9. I agree that the Government's decision whether to file a motion pursuant U.S.S.G.
5 § 5K1.1, as described below at paragraph 16 if this Agreement, is based on its sole and exclusive
6 decision of whether I have provided substantial assistance and that decision will be binding on
7 me. I understand that the Government's decision whether to file such a motion, or the extent of
8 the departure recommended by any motion, will not depend on whether convictions are obtained
9 in any case. I also understand that the Court will not be bound by any recommendation made by
10 the Government.

11 10. I agree not to commit or attempt to commit any crimes before sentence is imposed
12 or before I surrender to serve my sentence; violate the terms of my pretrial release (if any);
13 intentionally provide false information or testimony to the Court, the Probation Office, Pretrial
14 Services, or the Government; or fail to comply with any of the other promises I have made in this
15 Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement,
16 then the Government will be released from all of its promises, but I will not be released from my
17 guilty plea.

18 11. If I am prosecuted after failing to comply with any promises I made in this
19 Agreement, then: (a) I agree that any statements I made to any law enforcement or other
20 government agency or in Court, whether or not made pursuant to the cooperation provisions of
21 this Agreement, may be used in any way; (b) I waive any and all claims under the United States
22 Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal
23 Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my
24 statements, or any leads derived from those statements; and (c) I waive any defense to any
25 prosecution that it is barred by a statute of limitations, if the limitations period has run between
26 the date of this Agreement and the date I am indicted.

27 12. With respect to this plea, I agree that this Agreement contains all of the promises
28 and agreements between the Government and me, and I will not claim otherwise in the future.

1 13. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
2 District of California and the Fraud Section of the Criminal Division of the Department of Justice
3 only, and does not bind any other federal, state, or local agency.

4 The Government's Promises

5 14. The Government agrees not to file or seek any additional charges against the
6 defendant that could be filed as a result of the investigation that led to the pending information.

7 15. The Government agrees not to use any statements or other incriminating
8 information provided by the defendant pursuant to this Agreement against him, unless the
9 defendant fails to comply with any promises in this Agreement. The Government may, however,
10 provide the defendant's statements to or require the defendant to submit to an interview by any
11 federal or state agency, or require him to provide testimony in any federal or state proceeding, so
12 long as his statements may not be used against him. The Government may also inform the Court
13 and the U.S. Probation Department about the full extent of the defendant's criminal activities,
14 provided, however, that information received by the Government from the defendant pursuant to
15 this Agreement shall not be used to determine the applicable guideline range.

16 16. If, in its sole and exclusive judgment, the Government decides that the defendant
17 has cooperated fully and truthfully, provided substantial assistance to law enforcement authorities
18 within the meaning of U.S.S.G. § 5K1.1, and otherwise complied fully with this Agreement, it
19 will file with the Court a motion under § 5K1.1 and/or 18 U.S.C. § 3553 that explains the nature
20 and extent of the defendant's cooperation and recommends a downward departure.

21 17. Based on the information now known to it, the Government will not oppose a
22 downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1.

23 The Defendant's Affirmations

24 18. I confirm that I have had adequate time to discuss this case, the evidence, and this
25 Agreement with my attorney, and that he has provided me with all the legal advice that I
26 requested.

27 19. I confirm that while I considered signing this Agreement and, at the time I signed
28 it, I was not under the influence of any alcohol, drug, or medicine.

20. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this Agreement.

Dated:

THOMAS J. POOL
Defendant

KEVIN V. RYAN
United States Attorney

Dated:

KESLIE STEWART
Special Assistant United States Attorney

JOSHUA HOCHBERG
Chief, Fraud Section
Criminal Division
U.S. Department of Justice

Dated:

ROBERTSON T. PARK
Assistant Chief, Fraud Section

EUGENIA A.P. COWLES
Trial Attorney, Fraud Section

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated:

VINCE G. CHHABRIA
Attorney for Defendant